IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR MULTNOMAH COUNTY

STATE OF OREGON
PLAINTIFF

vs

JARED ESSIG
DEFENDANT

Case No. 24CR22957

MOTION TO COMPEL DISCOVERY

DECLARATION OF DEFENDANT RECAPITULATING AN IN-CUSTODY INTERVIEW

Comes now the defendant, pro se, and demands the State perform an adequate investigation, and produce any and all information in the possession and control of the state that demonstrates the Defendant's purpose and intent in being on the premises of the PSU Park blocks, and all information which tends to exculpate the Defendant, mitigate or negate the Defendant's guilt or punishment, or impeach any state witness, whether or not that information has been reduced to notes or writing, and whether or not it has been relayed by District Attorney staff to the prosecuting attorneys on the case.

RELEVANT STATUTES AND RULES

The Oregon Rules of Criminal Procedure (ORCP) 12.10, governs discovery in criminal cases Specifically the prosecution has a duty to disclose evidence and provide access to witnesses. Moreover, the prosecutor has a duty to the public to actually do his job, and collaborate with police detectives and PSU employees to conduct an adequate investigation, so that all relevant

information can be brought into consideration when deciding whether or which charges to bring. This official duty-to-care appears to have been neglected.

MATERIAL TO DISCOVER

RECEIVED:

- Body-cam footage from arresting officer Scott Swingle, in which the defendant is seen approaching from the west, far from the others targeted by the dispersal order and some ten or fifteen minutes after it was issued, and is heard shouting “Bastards Lives Matter” in response to their chants of “All Cops Are Bastards”, and is seen holding a sign that reads “Free the Hostages” and another proposing a “Hebrew-Arabic language exchange”. This pro-social speech is markedly and manifestly different than the obscenity and incitement heretofore indulged from the pro-Palestinian protestors/rioters, and tends to exculpate the defendant and support his legal theory.

NOT YET RECEIVED:

- Catalogue of signage carried by defendant at time of his arrest, including that which is visible in the previously discovered police body-cam video, demonstrating his intent as mentioned previously, which the State may wish to introduce as evidence of mens rea, or which it should take into account and admit as exculpatory.
- Catalogue of handbill, flyers, or other literature for distribution carried by defendant at time of his arrest, demonstrating his political affiliation and intent, which the State may wish to introduce as evidence of mens rea, or which it should take into account and admit as exculpatory. In particular, the proposition for an Israel-Palestine debate, and the Open letter to PSU published on

rosecityironfront.org, which will be presented by the defense at trial but which should already be in the possession of the prosecutor no less than it was in the possession of the jailer at booking. At least insofar as the arrest, search, and seizure, was made with probable cause. And as we can now clearly infer, the arrest probably wasn't made with probable cause, or else the seized material would be available for discovery.

- Interview / interrogation reports, including:
- A recording of the interview and deposition that the defendant gave while in custody, after unilaterally waiving his Miranda rights, knowingly and voluntarily, and asking to speak with and be deposed by a detective. (***Declaration of Defendant****: Thereafter I spent over an hour in handcuffs in an open hallway with several police officers and half-dozen defendants in the campus intifada and Park Blocks protests, and I lectured them all, to their great chagrin, on the various points of Palestinian history and Jewish history which they had previously chosen to prejudicially ignore. These points were summarized in my written literature and propaganda which was taken into evidence at booking, on which subject I had arrived in the Campus park blocks to lecture and engage in collegial dialectic. Since the rioters were unable to respond or refute my points, one of them asked the police to "make him stop talking", which the police declined to do, and we had a wide and free ranging discussion on topics of crime and punishment, public policy, my experience of homelessness and harassment by both police and by criminals, my litany of suggestions for police reform and accountability, the need for rule of law and its superiority to the rule of fist and gun, and the failure and moral error of anarchism as political philosophy, and many other topics besides.*) A record of this event should have been kept by the

police detectives, and should be available to both counsel for the prosecution and defense. If it does not fit the D.A.'s plan for prosecution, he should disclose it to the defense team as possibly exculpatory.

- Recordings of the songs that he sang to aforementioned group of police and criminal suspects, including a few hebrew psalms sung at low volumes in phrygian and locrian modes, and several pop tunes, notably, the 1993 hit "What's Goin' On?" (aka "What's Up?") by the Four Non-Blondes, which he reprised in an encore at the request of some personnel, to the apparent chagrin of the now silent and non-responsive rioters - whose chanting is by comparison boring, repetitive, and unmusical, IMHO, in addition to being violently anti-zionist, anti-Jewish, prejudicially ignorant, and generally untrue. For all these reasons, their accusations must be answered. Aesthetic proof and refutations are offered here as a feasibility study, and gifted to the public record, for the common defense and general welfare.
- Any publications by the defendant or posts made to websites or social media that are culpable or exculpatory, indicating his position with respect to the contentious political questions at issue on campus, or to the criminal conspiracy of burglary and attempted extortion which the learning community of subsequently PSU suffered, in an attempt to compel the University administration into taking the position sought by the other 20+ defendants in the Campus intifada and Palestinian occupation cases: namely, an Academic Boycott of Israeli Universities, and into Divestment from companies doing business with Israel.
- Any evidence of membership in or opposition to the many local groups which have organized around the aforementioned goal of the Palestinian occupation of

the PSU Millar library. The State may wish to introduce these as evidence of mens rea, or else provide it to the defense as exculpatory evidence.

- Any public communications made by the defendant, in his capacity as political activist, at regular meetings of the Portland City Council, of the Multnomah County Board of Commissioners, or any other deliberative assemblies indicating the defendant's aforementioned political stance regarding this event, which the State may wish to introduce as evidence of mens rea, or admit as exculpation.
- Incident command reports, After action reports, and any other material not otherwise specified but related to the police operation as a whole, especially that requested in the supplemental REQUEST FOR DISCOVERY OF PPB RESPONSE RECORDS, filed concurrently, which would speak to question of whether and to whom in particular the PSU Park Blocks were closed, and what authority the Police had to issue such a broad restriction on an otherwise open public forum.

STATE'S FAILURE TO COMPLY WITH DISCOVERY OBLIGATIONS

5/6/2024 Defendant's request for discovery, *BRADY* material, preservation of evidence, etc., made by and through legal advisor and assistant counsel Jack McRory.

At the parties' first appearance for trial-readiness 7th June 2024, the request was re-iterated by the defense, and trial readiness set-over for 26th July due to the State's failure to

produce anything beyond the police report of arresting officer Scott Swingle, and booking and property records.

Arresting officer's body-cam footage was discovered and received in the interim, which tends to exculpate the defendant and support his legal theory, as explained above.

An email the following week to D.D.A Bijay, who is handling discovery, reiterated this request for discovery and production, noting that at minimum the names and recorded statements of all other witness is needed.

On or around 25th July a "B-Docket Bad dates for trial" was received by email from D.A. legal intern Carson Taylor, which declared 2 witnesses for the State in the present matter, 1.5 days estimated for trial, and no bad dates. However the name of the second witness was not and still has not been disclosed - although this was presumably one of the detectives who received the in-custody deposition or overheard it.

Production and discovery was again requested by the defense, at the parties' second appearance for trial-readiness, on 26th July 2024, which was again set-over due to the State's failure to produce.

Despite having devoted enough time and attention to this matter to craft a pre-trial offer asking the defendant to admit guilt, accept liability, and perform 16 hours of community service in lieu of sentencing, The state did not turn over the requested second witness's name, nor any recorded statements made thereby. Therefore we cannot consider the PTO at this time.

To date, the state has not provided to the defense any notes, recordings, or other materials by any staff of the District Attorney's office memorializing any encounter with the second witness. On 6th August 2024, an emailed announcement from D.A. legal assistant

Carson Taylor with a "B-docket list of bad trial dates", gives now only 1 witness for the State, and 1 day estimated for trial. This indicates that the State has either failed to perform an adequate investigation, or else, having performed it, has decided that the voluntary deposition given in custody, and the political statements published online and in spoken aloud in public meetings by the defendant, were probably exculpatory. Although in probable possession of exculpatory evidence, the D.A. has failed to disclose this evidence to the defense, in defiance of Brady vs. Maryland, and has moreover decided to tendentiously ignore it and instead "muddle through" with a prosecution that perhaps ought to be withdrawn in the interest of justice, public safety, and common moral sense.

Any information in the possession of any employee of the state or of the alleged victim (PSU) that goes towards a determination of appropriate charges to be brought or withdrawn in this matter, should have already been provided to the defense in discovery, regardless of whether or not the defense demanded it, filed a discovery request, or filed a motion to compel discovery.

It is "as much the duty of prosecuting attorneys to see that a person on trial is not deprived of any of his statutory or constitutional rights as it is to prosecute him for the crime with which he may be charged." *Lane v. Marion Cty. Dist. Attorney's Office*, 310 Or App 296, 305 (2021) (quoting *State v. Osborne*, 54 Or. 289, 296 (1909))

RELIEF REQUESTED

Defendant seeks an order from the court requiring that the state comply with its obligations to perform a thorough investigation, discover, and disclose all inculpatory and exculpatory information to the defense, and requests an in camera review of the District

Attorney's complete file, and a colloquy to ensure the prosecution's compliance with its duties. We suggest the court consider the essay by *Jason Krieg, "BRADY* Colloquy" Standford Law Review (Vol. 67, 2014), and apply its suggestion to give the prosecutor a "nudge from the judge". Many recovering addicts have reported in 12-step meetings that this "nudge" rescued them from a downward cycle of failure and despair, and we hope that judicial nudging will encourage the District Attorney to make a "searching and fearless moral inventory", and be similarly edified.

DATED this 9th day of August, 2024.

Jared Essig
jared.essig@gmail.com
Pro Se Defendant

POINTS AND AUTHORITIES

ORS 135.815(g) ([T]he district attorney shall disclose to a represented defendant the following material and information within the possession or control of the district attorney: Any material or information that tends to: (A)Exculpate the defendant; (B)Negate or mitigate the defendant's guilt or punishment; or (C)Impeach a person the district attorney intends to call as a witness at the trial.)

ORS 135.845 ("The obligations to disclose shall be performed as soon as practicable following the filing of an indictment or information in the circuit court or the filing of a complaint or information charging a misdemeanor or violation of a city ordinance. The court may supervise the exercise of discovery to the extent necessary to insure that it proceeds properly and expeditiously.")
ORS 135.865

Brady v. Maryland, 373 U.S. 83 (1963)

Kyles v. Whitley, 514 US 419, 437 (1995) ([T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case…")

Strickler v. Greene, 527 US 263, 288, 119 S Ct 1936, 1952 (1999) (…"[U]nder *Brady* an inadvertent nondisclosure has the same impact on the fairness of the proceedings as deliberate concealment.")

Oregon Rules of Professional Conduct Rule 3.8 (The prosecutor in a criminal case shall (b) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.)

U.S. Constitution, Amendment XIV

Oregon Constitution, Article I, section 11

CERTIFICATE OF SERVICE

I certify that I served or caused to be served, a true and complete copy of the above motion on the District Attorney via the Oregon e-file and serve system, by email, or by both.

Mariel Mota
Multnomah County Deputy District Attorney
mariel.mota@mcda.us

DATED this ___ day of August, 2024

Jared Essig
jared.essig@gmail.com
Pro Se Defendant